1948

File No. S. Bcy. 1/48

Legal **DEPARTMENT**

A **BRANCH**

Subject: Suit Bijapur

Civil Suit No. 18 of 1947.
Civil Appeal No. 301 of 1950

Shri Raghavendra Swami ? ---- 1/a 86.
Math. ---

Versus

P.70
K-E

1) The Province of Bombay ------ Def

Claim Rs:- 2,00

Re:- for a declaration that the proceedi
for the acquisition of certain land
The Land Acquisition Act, 1894 are illeg
and ultra vires and for possession of the su
lands or in the alternative for recovery of Rs. 2,
for compensation.

File No. S. Bcy. 1/48

Ext. Secrt. Bby 24-B

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		v/s.	
		The Province of Bombay and another – Defts.	
		Claim Rs. 2,000.	
1)	Printed G.R.L.D. 8718 27th August 1947	The proceedings for the acquisition of certain lands, are illegal and ultra vires. Sanctioning the defence of the suit.	
2)	G.R.L.D. 11701 17th August 1950	Recording the result of the suit.	
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. Bijapur Civil suit No.18 of 1947.

Certain lands of the village of Yammihatti (Taluka Hungund) were acquired by Government unde the Land Acquisition Act for the purpose of a road for the District Local Board. The village is a Devsthan Inam of which the plaintiff is the Inamdar. Compensation was however paid to the occupants who were in actual possession of the lan On plaintiff's application a reference was made by Collector to the District Court but the latter rejected it as time-barred. He has therefore brougl this action for possession of the suit lands or in the alternative for compensation of Rs.2000/- contending that as he was not served with notices under the Land Acquisition Act sections 9(3) and 1: the proceedings are illegal and that as the Inamda of the village he is entitled to the compensation payable in respect of the lands.

2. The suit is defencible. It is true that the plaintiff was not represented before the Assistant Collector who made the award but the omission to give the notices does not invalidate the award. Theplainti only remedy was ~~to was~~ to apply to the Collector for a reference to the Court under sec.18. He pursued that remedy but the reference was rejected as timebarred and he is not now entitled to file a civil suit against Government. He may if he likes, sue the occupants who were paid the amount of compensation. T claim for Rs.2000 is also exaggerated. According to the District Judge who heard the reference,the compensation payable to the plaintiff would be only Rs.112.10.8.

3. Defence of the suit may be sanctioned on the lines of the accompanying brief.

ALR R/K 28/8

RLA 23/8

25.8.47

23/8/47

Exhibit No. 5. Civil Suit No. 18 of 1947.

In the Court of the Civil Judge, Sr. Dn.,
Bijapur.

---

1. Shri Raghavendra Swami Math... plff.

Vs.

1. The Province of Bombay and another... Defts.

Herein the plaintiff begs to apply as follows:-

The plaintiff has brought this suit for possession of the suit lands and in the alternative for compensation of Rs.2000/- against the defendants. It is learnt that the Government have paid a paltry amount of Rs.715/3/11 to some persons who are the annual tenants of the plaintiff. They are not entitled to this amount as they have no permanent interest in the land. It is likely that the Government may contend that they have paid this amount to those persons under a bona fide belief that they were entitled to the amount of compensation. The plaintiff does not admit this position, but in order to avoid further complications in the matter, he thinks, it is necessary to make these persons as parties to this suit, as they have wrongfully received the amount, and claims, that amount from them in the alternative and the rest from the present defts. It is therefore necessary to make the following amendments in the plaint.

1. The following persons should be added as defts 3 to 12 and their names be mentioned below that of deft No. 2.

3. Shiddappa Gurshidappa Huddar, at Ihannur, Taluka Hungund.
4. Mallappa Ningappa Bhavikatti, - do--do-
5. Yogappa Nurandappa Pattar, - do- -do-
6. Chidramappa Sangappa Huddar, - do- -do-

7. Hanmappa Gudappa Kon at Yemmihatti, Taluka Hungund.

8. Basappa Shiddappa Goudar -do- -do-

9. Aminappa Hanmappa Goudar -do- -do-

10. Gurasangavva Mudleppa Kumbar of Tangadagi taluka Muddebihal.

11. Sangayya Shiddayya Adapur of Adihal, taluka Hungund.

12. Komarappa Basappa Pattar, of Nidgundi taluka Bagewadi.

2. After para 5 of this plaint add a new para 5-A as follows:-

"5-A. Defendant No.1 by its award in the award in the aforesaid Land Acquisition Proceedings has paid a sum of Rs.715/3/11 to defts 2 to 12, as compensation for the compulsory acquisition, of the suit lands. These defendants being annual tenants of the lands, have no interest in them which would entitle these defts to receive the compensation amount. It is really, the plaintiff who is entitled to receive the amount. In case, it is held that the deft No.1 made the payment properly to defendants 3 to 12 these defe--dents would be liable to pay the amount to the plaintiff as they have wrongfully received the amount. The plaintiff therefore alternately claims that out of the amount of compensatic claimed by him, the amount of Rs.715/3/11 may be awarded from defendants 3 to 12 and the rest from the defendants 1 to 2. If the court finds on the contentions of the defendants 3 to 12 that they are entitled to any portion of the compensation amount the rest of the amount after deducting it from Rs.715-3-11 may be awarded from them and the balance from the defendants 1 and 2". Plaintiff is also entitled to interest at 6% from the date of the receipt of the amount by defts 3 and 12 upto the date of the suit, which amounts to Rs.248/-

3. In para 10 after clause C, clauses C(1) and C(2) should be added as follows:-

"C(1). In the alternative, the amount of Rs.715-3-11 with interest of Rs.248/- or such of this amount, as the court would find, the plaintiff to be entitled to, may be awarded from the defendants 3 to 12 and the balance from the defendants 1 and 2.

5-45

"C(2). Future interest on the amount found due from the defendants 3 to 12, from the date of suit, till recovery, may be awarded".

It is therefore prayed that the amendments may be allowed and summons may be ordered to be issued to the defendants 3 to 12.

Dated this day of January 1947.

Bijapur. Sd. S.G.Haveri.
Date:- Agent of the plaintiff.

I, Swamiracharay Guracharaya Haveri, Caste Brahmin, age 44, years occupation service and agriculture Watmuktyar of the plaintiff, hereby verify that the contents of the paras 1 to 3 above are true to my knowledge and belief.

Dated this 24th day of January 1947.

Sd-S.G.Haveri
Agent of the plaintiff.

Filed in Court on 24-1-1947.
Sd/- A.B.Kankanwadi.
Sd/- Kulkarni.
Pleaders for the plaintfi

Amendment allowed. Issue summons for settlement of issues.

24-1-1947. Sd/- N.V.R.

"True Copy"

Ahmad

District Government Pleade
Bijapur

10846
15-9-4 → H.C. 47

Submitted with d/s.

76-9

A.S. The A.G.P. Bijapur has forwarded a draft W.S. in Civil Misc. A. No. 8 of 1967. The draft at p. 37 as amended is in order and may be affirmed. Please see the A.G.P.'s further letter at p. 41. As pursued by him, paragraph 13A may be inserted in Suit's written statement & court fees & plaintiff's application for amendment may be filed duly signed & verified by him.

A.G.P. may be informed accordingly.

L.A. 15/9/67

A.C.R. 15/9

15/9

Submitted with pkgs. 5-3 4c/q 2h

Odm
14/10

A.S.: The dep may be informed that we issued drafts of various statements forwarded for use in the Indian Ocean and expect it may be forwarded to them.

This has reference to the note at p. 47. A little corresponding first draft at p. 37, para 4 of which was decided as unnecessary in the reference to that para in paragraph 10 of the first draft was not decided. Therefore the

Lord P has returned the
amended para 4 in the
revised draft. It may be
better as it is. The first
draft at p. 57 post is in order
and may be approved

RW
14/10/47

ALR RE 15/10

RAA 15/10

57 54

In the Court of Civil Judge, Senior Division, Bijapur.

Civil Suit No. 18 of 1947.

1. Shree Raghavendra Swami Math... plaintiff.

Vs.

1. The Province of Bombay and another defendants.

Herein the deft. No. 1 by his written-statement states as under:-

1. The plaintiff's claim in the suit is denied.

2. The allegations in paras 3,3(1),3(2),3(3), 4, 5 and 6 of the plaint are not correct and are denied.

3. The District Local Board Bijapur decided to construct the Dhannur-Sangam Road, and for this purpose Government notified for acquisition under section 4 of the Land Acquisition Act (I of 1894), certain lands including the lands in suit. The procedure laid down by section 4 of the said Act was correctly followed. As the lands were urgently required, it was directed under section 17(4) of the said Act that the provisions of section 5-A of the Act shall not apply. The Provincial Government acquired the land after due compliance with the -- provisions of sections 4,6 and 7 of the said Act.

4. On 1-1-1939 the plaintiff's agent S.G.Haveri presented an application to Collector of Bijapur stating inter alia that he may be made a party and that notice should be sent to him so that he may represent his claim in detail. In reply the Mamlatdar of Hungund acting under the order of the Assistant Collector informed him under his office No. L.A of 20-2-1939 that General Notices under section 9 of the Act would be issued to all the persons interested in the lands.

5-A. The Assistant Collector caused Public Notices to be given as contemplated by section 9 (1 and 2) of the said Act. They were also served on the actual occupants of the lands. ~~They were also served on the~~ It is true that the plaintiff was not individually

served with notice under sections 9(3) or 12(2) of the Act but it is submitted that the omission to give such notice does not invalidate the award. A general notice was given and it was open to the plaintiff to appear and make his claim.

5. Morever the plaintiff or his agent was not residing within the Bijapur District and therefore no special notice under sub-section 3 of section 9 was served on the plaintiff.

6. On 16-10-1940 the Assistant Collector made his award under section 11 of the Act and the statement accompaning the award shows that compen-sation for the suit lands was awarded to the occupants in possession of those lands. The plaintiff's agent S.G.Haveri made an application to the Assistant Collector on 18-1-1941 stating inter alia that he may be given a chance to represent his claims before awarding any compensation to any body. The Assistant Collector replied to him on 23-1-1941 stating inter alia that an award has been passed, that compensation had been awarded to persons whose names appeared as Kahjedars and that he is entitled to seek remedy through the Civil Court. Thereafter the plaintiff's agent made another application on 2-9-1941 to the Assistant Collector to make reference to the Court under section 18 of the Act and the Assistant Collector made a reference to the Court under section 18 of the Land Acquisition Act. The District Court rejected the reference mainly on the ground that the application to the Assistant Collector was time-barred.

7. The allegation made in para 2 of the plaint that no person including the defts had any right to lay down new roads and ways without the previous permission of the plaintiff is not correct. The allegations in paras 3 and 6 are not correct. It is not correct to say that the provisions of the Land Acquisition Act do not apply to alienated villages.

8. The plaintiff pursued his remedy under section 18

of the act and the reference was rejected by the District Judge as time barred. His only remedy was to make a refesence to the Court under section 18. The remedy by way of a seperate Civil Suit is not open to him and the suit does not lie.

9. The allegations of the plaintiff in para 2 of the plaint that all the proceedings were carred on behind the back of the plaintiff is not quite-corre General notices contemplated by section 9(1 and 2 had been given and it was open to the plaintiff to appear and to make his claim. Plaintiff's agent had been informed on 20-2-1939 as stated in para 4 above and the allegation inconsistant with that as made in para 2 of the plaint does not appear to be corect. The plaintiff's allegation in para 2 of the plaint that he was kept under the impression as stated in para 2 of the plaint does not appear to be corect. This deft. does not admit that tenants of the plaintiff referred to in para 2 of the plaint were merely annual tenants. The allegation in para 2 of the plaint to the effect that the rights of the plaintiff were absolutely ignored is not correct.

10. The allegation in para 2 of the plaint that the plaintiff was deprived of his suit lands illegally is not correct. The award is legal and valid and is binding upon the plaintiff.

11. Plaintiff's claim for Rs.2000/- as compensa -tion is a gross exaggeration. The market value of the suit lands was only Rs.498/12/-. The plaintiff was receiving from the occupants twice the amount of land revenue and compensation to plaintiff for that loss by capitalizing the rental value and taking into consideration algong with it 15% for compulsory acquisition and interest which the occupants were paid the compensation payable to the plaintiff for his interest in the suit lands would be only Rs. 112-10-0.

12. Plaintiff is not entitled to any amount of compensation from this deft. The plaintiff may therefore recover the same if at all only from the occupants concerned. The suit as against Government is not tenable.

13. The plaintiff is not entitled to the declaration, possession of the suit lands or compensation,. He is not entitled to any of the reliefs prayed for by him.

13-A. Deft. No. 1 has paid Rs. 498-12-0 as marked value and Rs.216-7-11 as 15% charges and capitalized value and interest. Plff's alleation in para 5-A of the plaint which is inconsistant with what is stated above is not torrect. The allegations of plaint-iff in para 5-A of the plaint that the occupants are or were annual tenants and that they have no interest which would entitle them to receive compensation amount and that it is really the plaintiff who is entitled to receive the same are not correct. This deft. is not liable to pay any amount to the plaintiff. Plaintiff is not entitled to inte... His claim for interest at 6 % is too high a rate. This defendant does not admit that interest would amount to Rs.248/

It is submitted that plaintiff's suit be dismissed with all costs on him.

District Government Pleader,
Bijapur.

I, District Government Pleader Bijapur do hereby declare that what is stated in paras 1 to 13-A above is true on information received and believed to be true.

Signed this day o 1947.

District Government Pleader,
Bijapur.

Suits :

Bijapur.

For a declaration that the proceedings for the acquisition of certain lands under the Land Acquisition Act, 1894, are illegal and *ultra vires* and for possession of the suit lands, or in the alternative for recovery of Rs. 2,000 as compensation.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 8718.

Bombay Castle, 27th August 1947.

Letter from the Collector of Bijapur, No. L.A.W. 181, dated the 19th June 1947—

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION, BIJAPUR.

Civil Suit No. 18 of 1947.

Shri Raghvendra Swami Math ... ... Plaintiff;

versus

The Province of Bombay and another ... ... Defendants.

Claim—Rs. 2,000.

Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 381, dated the 9th July 1947—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Bijapur, No. 8717, dated the 27th August 1947—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Received
Original

P. M. LAD,
Secretary to Government.

G. R., No. 8718, L. D., dated the 27th August 1947.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1947.

Copy forwarded for information and guidance to

Issued
NSD
13/11

Submitted after issue

2 File in S. Bijapur/48 (new file).

14-1

R.S. 14/11

Bijapur Civil Suit No. 18 of 1947.

Chronological Statement of Facts.

The suit is filed by Mr. S. G. Haveri, agent of the Shri Raghavendra Swami Math for a declaration that the proceedings for the acquisition of Survey Nos. 10, 11, 12 and 22 of the village of Yammihatti (taluka Hungund) under the Land Acquisition Act, 1894, are illegal and *ultra vires* and for possession of the suit lands, or in the alternative for recovery of Rs. 2,000 as compensation.

2. The village of Yammihatti in which the suit lands are situated is a Devasthan Inam village of which the plaintiff is the Inamdar. The Inamdar does not pay any annual Judi to Government. However a *nazrana* in a lump sum is paid at the time of succession of each swami of the Math according to the terms of the Sanad.

p. 1. of file I. 3. In 1936–37, the District Local Board, Bijapur, decided to construct the Dhannur-Sangam Road with a view to providing work to the unemployed agriculturists. For this purpose, Government sanctioned the acquisition under the Land Acquisition Act, 1894, of certain lands in the villages of Dhannur, Adihal and Yammihatti, including the lands in suit (*vide* G. R., R. D., No. 6128/33 of 17th November 1936). As the lands were urgently required, it was directed under section 17 (4) of the Land Acquisition Act that the provisions of section 5A shall not apply and that the notifications under sections 3 (*c*), 6 and 7 should be published in the *Bombay Government Gazette* a week after the publication of the notification under section 4.

p. 97. do. 4. On 1st January 1939, the plaintiff submitted an application to the Collector of Bijapur protesting against the acquisition of the suit lands without notice to him and without award of compensation and contending *inter alia* that the village of Yammihatti being a Devasthan Inam village, the plaintiff being the Inamdar thereof was and should be made a necessary party to the land acquisition proceedings and notices should be sent to him so that the may represent his claim in detail. In reply the Assistant Collector informed him that general notices under section 9 of the Act would be issued to all persons interested in the lands acquired.

p. 98. do.

p. 125 and 159 do. 5. On 19th September 1939 and 6th August 1940, the Assistant Collector issued general notices under section 9 of the Land Acquisition Act inviting claims for compensation in respect of the lands proposed to be acquired. No special notice was served on the plaintiff under sub-section (3) of section 9.

p. 209. do. 6. On 16th October 1940, the Assistant Collector made his award under section 11 of the Act. The statement accompanying the award shows that compensation for the suit lands was awarded to the occupants in possession of those lands (*see* pp. 208–210 of File I).

p. 226. do. 7. On 18th January 1941, the plaintiff submitted an application to the Assistant Collector contending *inter alia* that as the Inamdar of the village he was entitled to receive compensation for the suit land, that no notice had been given to him and that therefore he should be given an opportunity of representing his case before awarding compensation to any one.

p. 285. do. 8. The Assistant Collector replied to the plaintiff on 23rd January 1941 that compensation had been awarded to persons whose names appeared (in the Record of Rights) as occupants (Kabjedars) and that if the plaintiff had any

better claim to the compensation he should seek his remedy through the Civil Court. Thereupon on an application by the plaintiff, the Assistant Collector made a reference to the District Court under section 18 of the Land Acquisition Act. The District Court rejected the reference on 23rd December 1943 mainly on the ground that the application was time-barred.

9. On 15th October 1946, the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 16th December 1946 he filed this suit in the Coust of the Civil Judge, Senior Division, Bijapur.

Grounds of Defence.

The plaintiff challenges the acquisition of the suit lands on two main grounds. First, it is contended that Yammihatti being an Inam village Government had no right to acquire any land therein without the permission of the Inamdar and that the Land Acquisition Act does not apply to any alienated village. Secondly, it is urged that assuming that the Act applies to such village no notice as required by the Act was given to him, that the omission to give him notice was deliberate and as he was the only person having an interest in the suit lands and as he was not represented, the proceedings are *ultra vires*. On these two grounds it is contended that the award is not binding on him and that he is entitled to recover possession of the lands or Rs. 2,000 as compensation.

2. Now section 4 of the Land Acquisition Act empowers the Provincial Government to notify for acquisition of land in *any locality* if it appears to that Government that the particular land is likely to be needed for any public purpose. For the purposes of acquisition the Act does not make any distinction betweeen alienated and unalinenated land and there is nothing in the Act precluding Government from acquiring land in an alienated or Inam village. An Inamdar is a "person interested" in the land within the meaning of section 3 (*b*) of the Act and he is entitled to receive the value of that interest (*see* Om Prakash Compulsory Acquisition of Land in British India pp. 49-406). The words "in any locality" in section 4 (*1*) are wide enough to cover lands in alienated as well as in unalienated villages. There is therefore no substance in the argument that the Act does not apply to alienated villages.

3. As regards the plaintiff's second ground of objection, it is true that he was not present or represented before the Assistant Collector at the time when the latter made his award because he was not personally served with a notice either under section 9 (*3*) or section 12 (*2*) of the Land Acquisition Act, but it seems that the omission to give notice does not by itself invalidate the award. A general notice was given and it was open to the plaintiff to appear and make his claim. The remedy of a party who has not accepted the award for any reason is provided in section 18 of the Act. Under that section any person interested who has not accepted the award must apply to the Collector for making a reference to the District Court whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable or the opportionment of the compensation among the persons interested. The application must be made within the period of limitation prescribed in provisos (*a*) and (*b*) to section 18. The section provides a longer period of limitation for applications by a person who was not present or represented before the Collector or who had no notice of the award under section 12 (*2*). Therefore the omission to give notices under sections 9 (*3*), 12 (*2*) will not make the award illegal. In this case the plaintiff did pursue his remedy under section 18 but the reference was rejected by the District Judge as time barred. It should be urged

1959

that the remedy by way of a separate civil suit against Government is not now open to him. Where a statute creates a right not existing as common law and prescribes a special remedy for its enforcement, then that remedy alone must be followed and no other remedy will be available to the party (Chunilal *v.* Ahmedabad Municipality, 13 Bom. L.R. 950; Thin Yick *v.* Secretary of State I.L.R. (1939) 1 Cal. 257 at pages 269–270). Under the Land Acquisition Act, a claimant dissatisfied with the award can only demand a reference under section 18. According to this Act, the Collector's proceedings would be final on the lapse of the period of limitation laid down in the provisos to that section, subject only to later adjudication by the Reference Court on any reference that may have been applied for within that period. A separate suit against Government does not lie (*see* Om Prakash: pages 232–233).

4. The plaintiff has claimed in the alternative a compensation of Rs. 2,000 for the suit lands. However in paragraphs 9 and 10 of his judgment the District Judge who heard the reference under section 18 has accurately worked out the amount of compensation that would have been payable to the plaintiff if the reference had been competent. It appears that the occupants of the suit lands pay to the plaintiff by way of rent or assessment, twice the amount of the land revenue of the land and plaintiff had to receive compensation for that loss. According to these calculations the compensation payable to the plaintiff for his interest in the suit land would be only Rs. 112–10–0. His claim for Rs. 2,000 is preposterous and should be denied.

5. It should further be urged that even though the amount of Rs. 112–10–0 was not awarded to the plaintiff he can recover it only from the occupants concerned and not from Government. In I.L.R. 11 Rangoon 349 it has been held that where the Collector has duly paid out the money to

a claimant under section 31 of the Act, the Court has no power under the Act to order the Collector to pay the sum over again to some other person even if the Court is of opinion that the Collector ought to have awarded the sum to such person, and that a suit may lie against Government only where the circumstances are such that the Collector by his negligence or serious error has caused a loss to the rightful claimant. It cannot be urged in this case that the Assistant Collector was guilty of negligence or any serious error in this case. On the contrary the order of the District Judge shows that the plaintiff himself was negligent in not making his application within the prescribed period. The plaintiff can therefore recover the amount, if at all, only from the occupants concerned. The suit against Government is not maintainable. The plaintiff may if he is so advised apply to the Court for bringing the occupants on record as defendants.

6. For these reasons it should be urged that the suit fails and must be dismissed with costs.

S. Bijapur -/48
(New file)

Exh. No. 43.

Civil Suit No. 18 of 1947.

1. Whether notice was served with reference to the land Acquisition proceedings ?

2. Whether it was necessary at law to serve a notice personally on him ?

3. Whether the notice published in the Government Gazette was sufficient notice ?

4. Whether the plaintiff is bound by the porceedings and the Award ?

5. Whether he is entitled to compensation

6. Whether Rs.2000/- should be paid to him by way of compensation ?

7. Whether this court has jurisdiction to try the suit ?

28th October 1948.

A.C.Sequira.

Civil Judge,Sr.Dn.,Bijapur.

True Copy "

Dist.Govt. Pleader,Bijapur.

12217
15-7-50

Submitted with pps. (S. Bijapur 1/48)

18-7
AS.

1RT
75 93

This relates to Bijapur Civil Suit No.18/1947. It was for a declaration that the proceedings for the acquisition of certain lands of the village of Yammihatti (taluka Hungund) under the Land Acquisition Act, 1894, were illegal and ultra vires and for possession of the suit lands or in the alternative for recovery of Rs 2,000/- as compensation.

2. One of the contentions of the plaintiff was that as the Inamdar of the village the plaintiff was entitled to a personal notice under section 9(3) of the Land Acquisition Act, but no such notice was given to him; that the omission to give such notice was deliberate and, therefore, it invalidated the award. In defence it was contended in the brief that although no individual notice under section 9(3) was given, a general notice under section 9(1) was, in fact, given, that it was therefore open to the plaintiff to make his claim and that mere omission to give individual notice under section 9(3) would not invalidate the award.

3, The case is now being argued in the Court and it will be seen from the report of the District Government Pleader, dated the 10th July 1950, that the plaintiff is relying upon a very recent decision of the Bombay High Court in B. Laxmanrao vs. The Province of Bombay, 52.Bom.L.R. 316. That case decided that , it is only in the case of an occupier, the failure to serve notice under section 9(3) of the Act may by itself furnish him with the cause of action but that in the case of persons other than the occupie who are interested in the land mere omission or failure to serve such notice is not by itself sufficient to invalidate the award unless it is shown that the omission to give such notice was wilful or perverse or fraudulent on the part of the Collector. In that case, as in the present case, the plaintiff w a s the Inamdar but not the occupier ~~as the~~ and his name did not appear in the Record of Rights. On the

particular

particular facts of that case it was held by the High Court that, there was no such willful or fraudulent omission on the part of the Collector to give such notice. In the present case also it can hardly be contended by anyone that the omission to give notice under sub-section (3) of section 9 was wilful or fraudulent. The plaintiff was aware of the intended acquisition because, it was as early as the 1st of January 1939 that he had submitted an application to the Collector protesting against the acquisition of suit lands without notice to him and without an award of compensation. It was in reply to that application that the Assistant Collector had informed him that general notices under section 9 of the Act would be issued to all persons interested in the lands acquired. (viz. C.S.F. paragraph 4 p.63 of the suit file). Such general notices under section 9(1) were issued on the 19th September 1939 and 6th August 1940. The plaintiff's name apparently did not figure in the Record of Rights as 'occupier' or 'Kabjedar' and there is nothing to show that the failure to give notice to him under sub-section (3) of section 9 was wilful.

4. The plaintiff may most probably rely upon the penultimate paragraph of the judgment in which Their Lordships have observed:-

> " . . . . in a proper case the Collector might be fixed with constructive notice of the existence of a person who is interested in the land, and if the Collector fails to make proper inquiries with regard to the existence of such a person, the Court may come to the conclusion that the omission to serve notice was wilful. After all, as rights of subjects are affected, it is the duty of Government Officers to take proper care that inquiries are made to find out all the persons who are interested in the land which is sought to be acquired, and it may not lie in the mouth of the Collector to say in a proper case that the mere fact that the name of a person interested did not appear in the record of rights was sufficient to entitle him to make no other inquiry and to proceed with

the acquisition without serving any notice under s.9(3). "

These observations seem to be in the nature of obiter dicta. Besides, the distinction between this case and the reported one is that whereas in the latter the plaintiff was not aware of the intended acquisition of land until after the award was made, in the present case the plaintiff knew even before the proceedings under section 9 were started that the lands were intended to be acquired and he had, in fact, protested against such acquisition. The plaintiff had, therefore, sufficient notice and it was incumbent upon him to appear before the Acquisition Officer and submit his claim for compensation. In these circumstances, the observations of the High Court quoted above will not be of any assistance to him.

5. However, if for any reason the Court is inclined to hold that the omission to give notice under section 9(3) was wilful on the part of the Assistant Collector, the Court can, at the most, set aside the award, but such omission will not vitiate the earlier proceedings, e.g. the notifications under sections 4 or 6. If the award is set aside the proceedings will have to be resumed after issuing a notice to the plaintiff under section 9(3), in which case, the plaintiff will not be entitled to the relief for ~~compensation.~~

The District Government Pleader may be instructed accordingly.

20/7/15

1/48.

No. 487 of 1950.
Date: 26-7-50

From

Shri K.R.Rao, M.A.LL.B.,
District Government Pleader,
Bijapur.

To

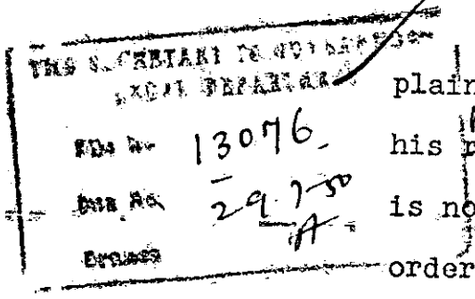
The Remembrancer of Legal Affairs,
Bombay No.1.

Subject:- Bijapur C.S.No.18/47
1.Shri Raghvendra Swami. plff.
Vs.
1. The Province of Bombay
and another deft.

Sir,

In continuation of this office No. 438 of 10-7-1950 seeking further instructions I have the honour to state that the Civil Judge, Senior Division, Bijapur delivered judgment on 24-7-1950 without waiting for further arguments An uncertified copy of the judgment is sent herewith. Appli-cation for certified copy of the judgment and Decree is ma today. on 24-7-50

In the light of the Ruling reported in 52 B.L.R. page 36 and in the light of Ex.67 dated 25-2-1939 a copy of which is already sent to you along with the papers, I do not think that this is a fit case in which appeal is necessary. The letter Ex.67 fixes constructive notice to the Collector regarding the interest of the plaintiff in the land. So the non-service of notice under section 9 clause 3 is willful as per that ruling.



Besides this, no compensation is given to the plaintiff as prayed for nor is possession awarded as per his prayer relief. The effect of the judgment is that possession is not disturbed but land acquisition proceedings are ordered to proceed after giving notice to the plaintiff under section 9 clause 3 of the Land Acquisition Act. I do not think the acquisition of the land for public purpose is prejudiced in any way. The only order against the Government is as regards half the cost to be paid.

Under these circumstances I feel that there is no necessity and that there is no use in filing the appeal.

P.T.O.

If you think that appeal is to be preferred instructions may be issued to me to prefer the appeal. The appeal is to be filed before the first of September 1950.

Original papers in 3 files are in your office.

Yours faithfully

K R Rao

Dist. Govt. Pleader, Bijapur.

L D

Re- Bijapur C.S. 18/1946

Letter from DGP overleaf may please be seen.

The letter referred to by the DGP has been replied to. But before (illegible) it reached him, the judgment was delivered.

31/7

AS

The last paragraph of the judgment affirms the position stated in the last but one para of this memo No 1041/2 of 24-7-1950 at page 3 of the file. I agree with the DGP that no appeal need be filed.

Re 31/7

AS RR 31/7

RAR 1/8

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Received on 16-12-1946 Decided on 24-7-1950
Registered on. 18-1-1947. Duration. Y 3- M 6 Days 6

In the Court of the Civil Judge, Senior Division,
At Bijapur. Exh. 1
Civil Suit No. 18 of 1947.

1. Shri Raghavendra Swami Math, Manjangud in Mysore State, by its present Mathad -hipati Shri Suyamindra Thirtha Swamigalu Guru Shri Suvritindra Tirtha Swamigalu by its Mutmukhtyar Swamiracharya Gura-charya Raveri of Dommaghatta Mysore st. Plaintiff.

against.

1. Province of Bombay.
2. The District Local Board, Bijapur by its President S.B.Desai Eq.
3. Shiddappa Gurushiddappa Huddar of Dhannur taluka Hunagund.
4. Mallappa Hingappa Bhavikatti of do.
5. Yogappa Hurandappa Patil of do.
6. Shidaramappa Sangappa Huddar of Do deceased by his heir 6A.
6A. Devendrappa Shidramppa Hudder of do.
7. Hanmappa Gudapa Kori of Hunur taluka Hunagund.
8. Basappa Shiddappa Goudar of Dhannur taluka Hunagund.
9. Aminappa Hanamappa Gouder
10. Gursangawa Kudleppa Kumbar of Tangadgi taluka Huddatihal
11. Sangayya Shiddayya Adihal of Adihal

12: Komarappa Basappa Pattar of Nidagundi. .. Defendants.

Claim Rs.

Judgment.

Suit for a declaration that the land acquisition proceeding in respect of lands belonging to the plaintiff is ultra vires and void and for possession, in the alternative for the recovery of Rs. 2000 by way of damages or for the recovery of Rs. 715-3-11 being the compensation amount together with interest.

2. The plaint is based on the allegations that the village Yaminhatti is a sarva Inam village of the ownership of the plaintiff, that the Government of Bombay took proceedings under the Land Acquisition Act for acquiring the suit land on behalf of the District Local Board, Bijapur for laying out a road, that the plaintiff was unaware of the proceeding, that later the plaintiff's vatmukhtyar made an application to the Collector praying him to implead the plaintiff, that it brought a reply that notice of the proceeding would be served on him, that no notice as a matter of fact was served on him, that an award was made on 16-10-1940, that the plaintiff protested that he requested the Land Acquisition Officer to make a reference to the District Judge, that his request was not complied with on the ground that his application was time-barred, that the compensation amount was paid to his annual tenants, that the award is ultra vires, that " the omission to give notices to the plaintiff was not accidental but deliberate" and that he is entitled to recover back the land, or to recover Rs. 2000/- as damages or a sum of Rs. 715 as compensation under the award.

3. The Government of Bombay denies the allegations made in the plaint. It is contended that it was not

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necessary to serve the plaintiff that a public notice was given, that the occupants of the lands were served, that the award is according to law, that the plaintiff and his agent were not residing in Bijapur District, that in consequence notice was not served on them, that the District Judge rejected the reference, that this suit is not tenable , that the tenants were not annual tenants, that the lands were worth Rs. 498-12-0 only, that the plaintiff is not entitled to the compensation amount and that the suit should be dismissed with costs.

4. Defendant 2 (the District Local Board, Bijapur) has taken similar points.

5. The following issues were framed in the case.

1. Whether notice was served on the plaintiff with reference to the land Acquisition proceedings ?
2. Whether it was necessary in law to serve a notice personally on him ?
3. Whether the notice published in the Government Gazette was sufficient notice ?
4. Whether the plaintiff is bound by the proceedings and the award ?
5. Whether he is entitled to compensation ?
6. Whether Rs. 2000/- should be paid to him by way of compensation ?
7. Whether this court has jurisdiction to try this suit.

6. My findings are-

1. No.
2. Yes.
3. No.
4. Is not bound by the award.
5. Yes.
6. To be decided in the land acquisition proceeding.
7. Yes.

Reasons.

6. The matter stands thus: The plaint Math is the Inamdar of the village of Yaminhatti and the land in suit forms part of the village belonging, to the plaintiff. The Government of Bombay decided to acquire the land for a public purpose, the purpose being the laying out or making a street across the land in question . Acquisition proceedings were started and they ultimately terminated in an award being made on 16th October 1940. Under this award a sum of Rs. 715-3-11 was paid to the occupants, i.e. defendants 3 to 12. Then on 18-1-1941 the agent of the Math made an application to the Assistant Collector stating that the Math was entitled to a portion of the compensation. On 23-1-1941 the Assistant Collector replied intimating that an award had been already passed and that compensation was awarded only to those persons whose names had appeared in the column of kabjedars and that though the village was a Devastan Inam standing in the name of the Math, no judi was paid to Government and so no reduction of judi was awarded and that if the Math had any claims to receive the compensation, they might seek their remedy through the civil Court. That reply reached the Agent of the Math on 30-1-1941. Thereafter, the agent of the Math made another application on 2-9-1941 to the Assistant Collector to make a reference to the District Court under section 18 of the Land Acquisition Act. On 6-12-1941 the Assistant Collector made a reference to the District Court for apportionment of the compensation.

7. The District Judge rejected the reference observing as follows:-

> " I am clearly of the opinion that the application of 3-9-1941 made more than six months after the making of the award on 16-10-1940 did not give the power to the

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Assistant Collector to make a reference to this Court under Section 18 and that this Court has no jurisdiction to entertain the reference." (Ex. 108).

8. Now the plaintiff's case is that no notice was served upon him under Sec. 9(3) of the Land Acquisition Act. Therefore, the award was void and his right in the land was not affected by the acquisition proceedings or by the award which was ultimately made. According to the plaintiff, he continues to be the Inamdar of this land.

9. The facts are few and are not in dispute. A public notice under s. 9(1) was issued by the Collector stating that Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him. It is also not disputed the notice was given by the Collector to the occupiers. It is also common ground that no notice under s. 9(3) provides that:-

" The Collector shall also serve notice to the same effect (as mentioned in sub-clause (1) on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf within the revenue district in which the land is situate."

10. What happened was this:- After the acquisition proceedings were started the plaintiff wrote to the Collector in connection with the land acquisition proceedings. A reminder was sent on 9-2-1939 (Ex.74) in these terms:-

" I request to remind your honour that I have submitted the following applications to your honour the receipt of which were not acknowledged nor any reply on them was given. So I request your honour to kindly inform me whether they are duly received .....

(1) Application to make the Inamdar of Yeminhatti.... a necessary party for the Land Acquisition proceedings submitted on 1-1-1939 (2) Appeal petition against the order No.Hgd..... on 18-1-1939."

11. On 25-2-1939 another letter was written to the Collector extracted below : (Exh.76).

" I request your honour to kindly inform me at what stage the Land Acquisition proceedings of Dhannur Sangam Road (taluka Hungund) are. If the correspondence is returned by D.I.L.R. in further action, my application to the Collector dated 1-1-1939 should kindly be considered. I humbly request your honour to give me a chance to represent my claim to compensation before you pass any orders in the matter.

12. The plaintiff's applications brought the following reply (Exh. 67).

The Prant Officer S.D., Bijapur, has the honour to acknowledge the receipt of your communication dated 9-2-39 The correspondence regarding acquisition of lands..... has been sent to the D.I.L.R.for land statement. On its receipt notices will be sent to you."

13. The gravaman of the plaintiff's complaint is that despite the fact that the Collector undertook to serve a notice on him pursuant to Ex. 67, he was not served with a notice under s. 9(3), and the plaint is based on the allegation that " the omission to give notices to the plaintiff was not accidental but deliberate as the plaintiff had been informed by the Assistant Collector S.D. that notices would be given to him after receipt of papers from the District Land Records office."

14. It will be noticed that an obligation is cast upon the Collector to serve a notice on every occupier of

the land which is to be acquired. There is also an obligation cast upon him to serve a notice on persons who are known to him to be interested in the land or whom he believes to be interested in the land. Therefore, the Legislature has made a clear distinction between occupiers of the land and persons who are interested in the land. As far as occupiers are concerned, the Collector must serve a notice upon the occupier. As far as persons interested are concerned, the obligation is cast upon him only if he knows of such persons or believes that there are such persons. With regard to the first class, the obligation is not absolute. With regard to the second class, the obligation is not absolute, but is relative and it only arises provided the Collector has knowledge or belief with regard to the existence of the second class of persons. Therefore, it is clear that a person who has not been served with a notice under s.9(3), and who is interested in the land to be acquired, can only have a grievance provided he satisfies the court that the Collector wilfully or fraudulently or perversely omitted to serve the notice contemplated by section 9(3).

15. The principle was laid down in 52 B.L.R. 316 at p. 320 as follows:-

" We also wish to make it clear that in a proper case the Collector might be fixed with constructive notice of the existence of a person who is interested in the land and if the Collector fails to make proper inquiries with regard to the existence of such a person, the Court may come to the conclusion that the omission to serve notice was wilful. After all, as rights of subjects are affected, it is the duty of Government Officers to take proper care that inquiries are made to find out all the persons who are interested in the land which is sought to be acquired, and it may not lie in the mouth of the Collector to say

in a proper case that the mere fact that the name of a person interested did not appear in the record of right was sufficient to entitle him to make no other inquiry and to proceed with the acquisition without serving any notice under s. 9(3)."

17. As stated already, the Collector undeniably had knowledge with regard to the existence of the second class of persons. For the matter of that, by letter dated 28-2-1939 Ex. 67 he expressly undertook to serve the plaintiff with a notice under section 9 (3). The fact of the matter is that despite Ex. 67 he omitted to serve the notice contemplated by s. 9(3). In this position of affairs, the Collector should not have proceeded with the acquisition without serving any notice under s. 9(3). Against this background of facts my finding is that in law it must be held that the Collector " wilfully " omitted to serve the notice contemplated by s. 9(3). The plaintiff is therefore, not bound by the award in respect of which no notice was given to him under s. 9(3).

18. If a finding were necessary I would say that prima facie the owner of the land has the whole of the interest. It is for the tenant to show that what part of the interest the proprietor or Inamdar has divested himself of in his favour. Now the tenants allowed this suit to proceed ex-parte and in the absence of evidence I am inclined to hold that the plaintiff is entitled to get the entire compensation amount. And I am aware of the principle that courts of law have accepted the ratio of 10 to 6 as a sound rule to be followed in normal cases but liable to alteration on proof of special circumstances or considerations. (A.I.R. 1942,Nag. 32; A.I.R. 1923 Cal. 21).

19. In the result I pass a decree declaring that the award is void and that the plaintiff's right is not affected by the award. In consequence, the plaintiff should be served

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with a notice by the Collector under s. 9(3) of Land Acquisition Act as a person interested in the land. By his plaint and in his evidence the plaintiff alleged that the suit land was worth Rs. 2000/-. There is no evidence to the contrary beyond the award which is not binding on the plaintiff. In this position of affairs I feel justified in awarding costs on a sum of Rs. 2000/- to be paid to the plaintiff by defendants 1 and 2 in equal shares.

24-7-1950.

Sd. A.C.Sequeira,
Civil Judge, Sr.Dn.,
Bijapur.

"True Copy"

Govt Pleader
Bijapur

Decree

In the Court of the Civil Judge, Sr.Dn.,

At Bijapur.

Civil Suit No. 18 of 1947.

1. Shri Raghavendra Swami Math,
Nanjangud in Mysore State, by its
present Mathadhipati Shri Suyamindra
Thirtha Swamigalu, Guru Shri Suvritindra
Thirtha Swamigalu, by its Tatmakhtyar
Swamiracharya Gurucharya Havati,
Brahmin age 44, occupation service
and Agriculture, residence Bramachatta
Mysore State. ... ... Plaintiff.

Versus.

Province of Bombay.

2. The District Local Board, Bijapur
by its president S.D. Desai Esquire.
3. Shiddappa Gurushiddappa Hudder of
Dhammur Taluka Hungund.
4. Mallappa Mingappa Bhavikatti of do.
5. Yogappa Hurandappa Patil of do.
6. Shidramappa Sangappa Hudder of do
deceased by his heir 6A.
6A. Devendrap a Shidramappa Hudder of Do.
7. Hanamappa Gudapa Kori of Hunnur
taluka Hungund.
8. Basapa Shiddappa Goudar of Dhamm r
taluka Hunagund.
9. Aminappa Hanamappa Goudar.

Gurusangana Kudkappa Kumbar of Tangadgi
Taluka Muddebihal.

11. Sangayya Shiddayya Adihal of Adihal.

12. Komareppa Basappa Patter of Hidagundi. ... ...Defendants.

Claim Rs 2000/-

The Village Yamminahatti in the Mungund Taluka of the Bijapur District is a Sarva-Inam village of the plaintiff Math and as such the plaintiff is the full owner of all the lands comprised within the limits of the village including the soil, underground treasure, mines, minerals etc. The roads, ways, village site waste lands and half of the bed of the river Krishna etc. are also vested in the plaintiff as full owner.

2. The plaintiff being, thus, the absolute owner of all the lands and sites etc. of the said village, no person (including defendants) has any right to lay down new roads and ways without the previous permission of the plaintiff, within the limits of the Yaminhatti village. Plaintiff learns that defendant No.1, at the instance of defendant 2 started proceeding purported to be under the Land Acquisition Act No.1 of 1894, for the purpose of laying down and constructing a new Road called the Dharmur-Sangam Road and that for this purpose passed orders purporting to acquire portions of lands in the villageas detailed below :-

S. Nos.	Area required.
10	1-10-
11	0-21
12	1- 4
22	0-18
	3- 3

No permission of the plaintiff was taken before starting

those proceedings nor was he informed, as required by the Act, of those proceedings by any notice. But all the proceedings were carried on behind the back of the plaintiff. When plaintiff's Vatmukhtyar came to know that some such proceedings were going on, he applied to the Collector of Bijapur, that plaintiff should be made a party to those proceedings and his objections be heard before passing any orders. He was informed that he would be given notice at the proper ~~time~~ time. But no notice was ever issued to plaintiff under any of the sections of the L.A.Act till the end. The plaintiff was kept absolutely in the dark of what was going on; and he was kept under the impression that notices would be issued to him and his objections heardbefore any orders were passed. The Collector, the plaintiff later learnt, passed the award on 16-10-1940 by making the annual tenants of the plaintiff only parties to the proceedings. On coming to know of this award, the plaintiff applied to the Acquiring Officer, protesting against the passing of the award and requested him to make a reference to the District Judge of Bijapur; but he rejected the reference on 23-12-1943 on the ground that the - - application by the plaintiff to the Acquiring Officer was made beyond time and that therefore, the latter had no authority to make the reference. As the plaintiff was not informed of the proceedings pending before the acquiring officer and of the award as required by law, plaintiff could not ~~xx~~ make the application in time, as he learnt it is beyond the required time. The whole of the compensation amount was paid by the acquiring officer to the annual tenants of the plaintiff, - - ignoring absolutely the rights of the plaintiff. The possession of the lands acquired was already taken by the defendants under the emergency powers under

Section 17 of the L.A. Act, and the work of laying down the Road had already commenced. The Plaintiff was thus deprived of his lands illegally and without his consent.

3. The plaintiff claims that the whole of the proceedings started under the L.A.Act for acquiring the suit lands, are ultra-vires and void and absolutely of no valid effect for the following among other grounds :-

1. The village of Yamanahhatti being the Sarva Inam village of the plaintiff, the Government had absolutely no right over it, as it was in the case of unalienated lands and so it had no right to acquire any land in the Inam village without the previous permission of the Plaint-Hath. In fact the L.A. Act could not apply to an alienated village.

2. Assuming that L.A. Act does apply to an alienated village no proper notice or notices were given to plaintiff as required under the L.A.Act. Such notices being mandatory, the proceedings could not be started and conducted without complying with those provisions. The plaintiff was the only person interested in the lands and as he was not represented in those proceedings, the whole proceedings are ultra vires and illegal. The omission to give notices to plaintiff was not accidental but deliberate, as the plaintiff had been informed by the Assistant Collector S.D. that notices would be given to him after receipt of papers from the District Land Records Office. These proceedings, therefore, are not binding on plaintiff and have no legal effect so far as plaintiff's rights are concerned.

3. Even assuming that the Government had a right to acquire land in the village of Yamirhatti, the award passed in those proceedings as well as the determination of amount of compensation and the appointment thereof

are not bi[illegible] . The plaintiff's right t[illegible] to recover back the proper amount of the [illegible] n acquired and damages for all and [illegible] of plaintiff lands, remains unaffected insofar as the award.

4. For the above stated reasons and others, the plaintiff is entitled to get back the possession of the lands, [illegible] in the petition disconnected, together with damages for the illegal and unlawful entered in the lands by the defendants, if the government is held to have the right to [illegible], plaintiff is entitled to damages in the [illegible] for the loss of the lands [illegible], that is, Rs. ,000/ equal to the [illegible] of the lands at the time of the passing of the award and to the present value of the [illegible] required out of the lands [illegible].

5. [illegible] by the [illegible] of defendants, plaintiff is deprived of the lands, defendants is liable to plaintiff either to restore the lands or give compensation as mentioned above. The lands, having been acquired, for the use of defendants and it is [illegible], and also as the lands are not actually required - management of defendants, it is impossible to restore to the plaintiff. So both of them are proper parties to the suit.

6. Defendants [illegible] the notification under the aforesaid Act, published in the gazette of Rs. 716-8-11 to Rs. 8 to [illegible], compensation for the acquisition, [illegible] those defendants, but [illegible] of the lands, have no interest in the [illegible] and the above defendants to receive the compensation amount. It is really, the plaintiff who [illegible] to receive the amount. In case it is held that the [illegible] has made the payment bona fide to defendants, it is to be determined [illegible]

liable to pay the amount to the plaintiff as they have wrongfully withheld the same. The plaintiff therefore alternately claims that out of the amount of compensation claimed by him, a sum of Rs. 715-3-11 may be ordered from defendants 1 to 3, or a sum of Rs. [illegible] from the defendants 1 and 2. If the court finds that the [illegible] defendants 1 to 3 are entitled to any portion of the compensation amount by reason of the deduction from Rs. 715-3-11 as claimed by the plaintiff and the balance from the defendant No. 2, plaintiff is also entitled to interest on the said amount from the date of receipt of the suit by defendants 1 to 3 upto the date of this suit, that is [illegible].

6. The cause of action arose in February 1946, when plaintiff demanded from defendant 2 the payment made by the A.G. to the District Agricultural Officer.

7. [illegible] jurisdiction of this court as the defendants [illegible] the court [illegible] this suit is [illegible] the plaint [illegible] above. He seeks [illegible] lower Rs.

8. The defendants reside [illegible] cross within the jurisdiction of this court. Hence this court has jurisdiction to try this suit.

9. Notice [illegible] of the Civil Procedure Code [illegible] defendants on [illegible] alleging [illegible] suit.

should be served with a notice by the Collector under Section 9 (3) of Land Acquisition Act as a person interest in the land. By his plaint and the evidence the plaintiff alleges that the land was worth Rs. 2000/-. There is no evidence to the contrary and the award is not binding on the plaintiff. In the circumstances I feel justified in awarding a sum of Rs. 2000/- to be paid to the plaintiff by the defendants in equal shares.

All costs.

Plaintiff	Rs. As. P.	Defendants	Rs. As. P.
1. Court fee	15-0-0	1. Court fee	0-12-0
2. Pleader's fee	10-0-0	2. Pleader's fee	100-0-0
3. Process fee	100-0-0	3. Process fee	3-4-0
4. Pleader's fee	50-0-0		
5. Costs to witnesses	15-2-0		
6. Costs to Collector	8-12-0		
	509-14-0		103-16-0

Given under my hand and seal of the Court this 24th day of July 1950.

Sd/- M.R. Patil.
Clerk.

Sd/- A.C. Sequeira
Civil Judge, S.D.,
Vijayapur.
3-8-1950.

"True Copy"

Advocate for Plaintiff

10. Plaintiff prays :

a). It should be decla[illegible] that the [illegible] by the defe[illegible] to be regarded [illegible] void, illegal and [illegible] the trial title.

b). A perpetual [illegible] be issued [illegible] the defendants.

c). In the alternative, decree be passed in favour of the plaintiff as per [illegible] declaring defendants in the plaint.

d). In the alternative, a decree for Rs. 718-11 with interest @ 3.00/- per annum [illegible] the Court could find, [illegible] entitled to, by reason [illegible] the defendants [illegible].

e). Future [illegible] the defendants [illegible] the suit, till recovery, may be [illegible].

d). Costs of [illegible].

e). Any other [illegible] the Court thinks, the plaintiff [illegible], in fact, [illegible] in the case.

The suit coming before Sh. [illegible], Civil Judge, [illegible], finally on 7th July 1980, in the presence of [illegible] for the plaintiff and Sh. [illegible] for defendants 1 and 2 and S.N. Gill for defendant [illegible] it is hereby decreed and ordered that,

" In the result I pass a decree [illegible] the suit is valued at Rs [illegible] affected by the [illegible] the plaintiff

Presented on 9-9-1950.

Sd.M.K.Deshpande.
C.O.C.

Regular Appeal No. 301/19[illegible].

In the Court of the District Judge,

Bijapur.

1. Shri Raghavendra Swami Math, Nanjangud in Mysore State, by its present Mathadhipati Shri Suyamindra Thirth Swamigalu Guru Shri Suvritindra Thirth Swamigalu, by its Watmukhtyar Swanirâcharya Guracharya Haveri, Brahmin, age 48, occupation service and agriculture, residence: Bommaghatta, Mysore State. Appellant Ori.Plff.

Vs.

1. The State of Bombay, by Collector, Bijapur,

2. The District Local Board, Bijapur by its president Respondent Ori.Defts.

Claim Rs.100/- for the purpose of courtfees and the same for jurisdiction.

Being aggrieved by the judgment and decree of the Civil Judge, Senior Division, Bijapur, in C.S.No.18/19 the appellant-plff. begs to prefer this appeal against the same on the following among other grounds:-

1. That the Judgment and the decree of the lower court are contrary to law and evidence.

2. The lower court erred in not granting any of th reliefs prayed for in the plaint, though it decreed the suit

3. The lower court has not framed proper issues in the case.

4. The lower court ought to have awarded possessio

of the land under acquisition.

5. The lower court ought to have held that the suit land is not vested in the State and its possession by deft 2 is illegal.

6. The lower court has lost sight of the provisions of the Act that the land vests absolutely in the State only on expiration of fifteen days from the publication of notice under section 9 sub section (1) of the Act and not till then.

7. The lower court has failed to see that the Govt. has taken possession of the land even before the publication of General notice under section 9(1) and thus the proceedings are colourable and mala fide, which prevent the land under acquisition vesting in the State.

8. The finding of the lower court on issue No.6 is erroneous.

9. The lower court has approached the case from an entirely wrong- view point and thus causing a failure of justice.

10. The appeal is valued at Rs.100/- for the purposes of the court fees, that being more than twenty two and half times of the assessment of the lands under acquisition.

It is, therefore, prayed that the Court be pleased to allow the appeal and order the possession of the suit lands with mesne profits or in the alternative the compensation interest and the appeal be allowed with costs.

Bijapur.
1-9-1950.

Sd.N.K.Kulkarni.
Sd. A.B.Kankanvadi.
Pleaders for the appellant.

Order.

Defict Court fee be paid within one week from today.

26-9-50. Sd.J.R.Nazareth.
District Judge.

Deficit Court fee is paid on 21-9-1950.

Sd. M.K.Deshpeande.
Cm0.C.

Particulars to be entered in the
Register of Civil ~~xxxxxx~~ regular appeals.

25-9-1950. Sd.M.K.Deshpeande.
Clerk of the Court.

Admitted. Notice.

26-9-1950. Sd.J.R.Nazareth.
District Judge.

" True Copy"

District Govt.Pleader,Bijapur.

Suits
Bijapur.
For a declaration that the proceedings for the acquisition of certain lands under the Land Acquisition Act, 1894, are illegal and ultra vires and for possession of the suit land, or in the alternative for recovery of Rs. 2,000 as compensation.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 1226

Bombay Castle, 19th January 1951.

Read Government Resolution, Legal Department, No. 11701, dated the 17th August 1950.

Endorsement from the District Government Pleader, Bijapur, No.15 dated the 4th January 1951, requesting Government's sanction to the defence of the Civil Appeal No. 310 of 1950 filed by the plaintiff in the suit noted in the margin.

In the Court of the Civil Judge, Senior Division, Bijapur,
Civil Suit No. 18 of 1947.

Shri Raghvendra Swami Math - - - - Plaintiff;
Vs.
The Province of Bombay & another- - Defendants

Claim Rs. 2,000/-

Letter from the Collector of Bijapur, No. LAW 181, dated the 13th January 1951, requesting sanction to the said appeal.

RESOLUTION:- Sanction is accorded to the defence of Civil Appeal No. 310 of 1950 in the Court of the District Judge, Bijapur, on the lines of the brief accompanying Government Resolution, Legal Department No. 8718, dated the 27th August 1947, and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division Bijapur, dated the 24th July 1950.

By order of the Governor of Bombay,

Issued on 19/1
original
submitted for sign
Ac 18/1 A.A.S.

E.P.BHAMGARA,
Additional Assistant Secretary to Government.

To

The Revenue Department,

The Collector of Bijapur,

The District Government Pleader, Bijapur
(with papers of the case)

KC. 19.1.51.

Subbd after issue
file in S. Bio 1/48
Dec 1948 A Sohn

55-3

In the Court of the Assistant Judge, Bijapur.

Civil Appeal No. 301 of 1950 from an order in C.S.No. 18/47 of the Civil Judge, Sr.Dn. Bijapur (Shri A.C.Sequeira).

Shri N.K. Kulkarni & Shri A.B. Kankanwadi & Shri V.V.Albal.

1. Shri Raghavendra Swami Math, Nanjangud in Mysore State, by its present Mathadhikari Shri Suyamindra Tirtha Swamigalu by its Watmukthyar Swamiracharya Guracharya Haveri. — Appellant (Orig. Plff.)

Vs.

Shri M.R.Patil & Shri A.C.Angadi.

1. The State of Bombay, by Collector, Bijapur.
2. The District Local Borad, Bijapur, by its President.

...Respondents (Orig.Defts)

This appeal arises out of the judgment and decree of the Civil Judge, Sr.Dn.Bijapur, in Civil suit No.18 of 1947. The suit was filed by the appellant for a declaration that the proceedins taken by the respondents for the acquisition of the lands described in the suit were ultra vires and void and were not binding on the appellant and for possession of the lands. In the alternative, he claimed for the recovery of Rs 2000/- in all for damages.

2. The appellant alleged that the village of Yaminhhatti was an absolute Inam with him and was of his ownership; that the Government of Bombay took proceedings under the Land Acquisition Act for requiring the suit land on behalf of the District Local Board, Bijapur, for the purposes of a road; that the appellant had no notice of the proceedings and was not given a notice even though he intimated of his rights to the Collector; that he came to know that an award was made and so he requested the land acquisition Officer to make a reference to the Dist.Judge, but his request was not complied with as his application was considered to be time barred. He, therefore, had brought this suit for a declaration and possession as above on the ground that as notice was not given to him, all the proceedings were ultra vires and void and not binding on him and he was entitled to possession or in the alternative to compensation.

2. The respondents contended that it was not necessary to serve the appellant and that as the occupants of the lands were served, the award was according to law; and that in any case the compensation claimed was very high.

3. The learned Civil Judge came to the conclusion that it was necessary to serve a notice of the proceedings on the appellant and that as the notice was not served, the award was not binding on him. He also held that he was entitled to compensation but did not determine the amount which should be paid. He did not go into the question about the prayer for possession. On his findings as above, he passed an order declaring that the award was not binding on the appellant and calling on the respondents to make a fresh award by giving a proper notice to the appellant.

4. Against this order, the original plff has come in appeal.

5. Before me it is not denied that under the circumstances, notice under Sec. 9(3) of the Land Acquisition Act should have been ~~k~~ given to the appellant. The only points which have been urged before me are:-

(1) Whether the appellant was entitled to possession as claimed by him ?

(2) Whether the appellant was entitled to compensation ? If so, what amount ?

6. On the first point, it has been urged on behalf of the respondents that possession was taken by the Government under the procedure contemplated by section 17(1) of the Land Acquisition Act. Under this clause, the Govt. can acquire the land required urgently or for a necessity by giving notice only to the actual occupants of the land under sec.9(1) and taking possession of the land in time after 15 days of giving such a notice. The clause provides that this possession can be taken even before the award was passed and that on such possession being taken the Govt. become absolute owners of the land so acquired.

7. The learned Govt.pleader submits that in the presence possession was taken under sec. 17(1) of the Land Acquisition Act. We have the Notification of Government which provides for

the waiving of the procedure under sec. 5(a) of the Land Acquisition Act for making inquiries etc. with regard to the rights on the lands to be acquired. We have also the recital in the Notification that the land was urgently needed. It is also admitted that it was required for the laying of a road. Hence I think the documents make it quite clear that the procedure prescribed under Sec. 17 (1) was followed. But the learned pleader for the appell--ant has submitted that even then the acquisition of the land is not legal and valid. According to him it was for the Government to show that the land was taken into possession 15 days after giving notice under Sec. 9(1) to the occupant-tenants.His point is that when the appellant has no notice of the proceedin s and alleges that the acquisition was illegal, it was for the Govt. to show that the acquisition actually was in accordance with law. I do not think that I could accept this argument. The plaint itself recites that possession was taken under sec. 17 of the Land Acquisition Act. If we read the plaint as a whole, it could be seen that the whole basis of the claim of the appellant that the acquisition was invalid was the absence of a notice under sec. 9(3) of the Land Acquisition Act upon him. It is no where stated that the acquistion was invalid for any other reason, nor is it stated that although the acquisition was made under Sec. 17 of the Land Acquisition Act, the provisions of that Section were not complied with. We must presume, when it is stated that the land was taken possession of under Sec. 17 of the Land Acquisition Act that all the necessary forma--lities were undergone by the Government. I was up to the appellant, therefore, to say specifically that the award and the proceedings were invalid on both grounds, i.e. want of notice under sec. 9(3) on him and the non-com liance of the necessary proceedure under sec. 17 of the Land Acquisition Act. It is true that the learned

Civil Judge below did not frame an issue on the question of possession and this point was, therefore, not agitated before him. But it was up tpthe appellant to seek an issue on the point. It may be that both the respondents as well as the learned Civil Judge understood the pleading in the light of which I have stated them to be above and so no issue was framed. The Government have not traversed this ground with regard to the validity or otherwise of the acquisition under Sec. 17. It is quite probable that it was not done because there was no allegation about the invalidity of the acquisition under that section. I think, therefore, that the appellant will not be entitled to claim possession of the land since it is vested in Govt. under sec. 17(1) of the Land Acquisition. Act.

8. The question then arises as to what would be the proper relief to be awarded to the appellant. On this point the learned Civil Judge has given a direction to the Govt. to give a notice under sec. 9(3) of the Land Acquisition Act to the appellant and make an award about compensation. I am not sure that this is an order which could be executed against the Government. He has not provided for the eventuality of the order either being not carried into effect or the Government being unable in law to reopen the award which had become final after the reference to the District Court. In my opinion, therefore, we must make provision of the payment of compensation to the appellant with regaard to his rights.

9. On this point, the learned pleader for the appellant has submitted that he should be given the amount of Rs 715-7-0 which was the compensation awarded. That presupposes that the occupants had no rights with regard to this compensation. The learned pleader, however, submits that the occupants, though made parties to the suit, had not appeared and the issue was answered against the Government with regard to compensation. There are no cross-objections on behalf of the Government. Hence his submission is that the amount which was determined as compensation must be paid to him. But since the question with regard to apportionment of the compensation was not specifically before the trial Court.

it would not be proper to make an order with regard to the payment of the money which was already paid to the tenants. If we have to make the Government pay that amount to the appellant, we must give an opportunity both to the Government and the tenants to put up their sayin in this matter. I thin, therefore, that the proper course would be to remand the suit to the learned trial Judge for determining the amount of the compensation and its apportionment. I,would, therefore, make the followin order.

Order.

10. The appeal is allowed in part and the order of the trial Court is modified as follows:-

It is declared that the award in suit is not binding on the appellant. However, the possession taken under sec.17(1) of the Land Acquisition Act is absolute and that question cannot be re-opened.

The respond nts are ordered to make a proper award regarding compensation only by giving a proper notice to the appellant under sec.9(3) of the land Acquisition Act. The suit is remanded to the trial Court for the determination of the amount of the compensation only and its apportionment. The learned Civil Judge will be at liberty to fix a time within which the Government should take the first steps towards the making of the awardmt as directed above. If the Govt. fail to move in the matter within that period, the learned trial Judge will be at liberty to order the payment of the compensa--tion which he may decree.

No order as to costs of this appeal.

19th April 1952. Sd/- V.N.Patil.

Asst.Judge,Bijapur.

True copy

Dist.Govt.Pleader,Bijapur

Di

6, Lh. 13

In this case certain lands situate in an Inam village were notified for Acquisition by the Govt. Possession of the lands was taken immediately under the urgent clause. In the inquiry which followed for determination of the Compensation for the acquired lands Notices under Sect. 9(3) of the Land Acquisition Act were issued only to the Occupiers whose names appeared in the Record of Rights. No Notice was issued to the Inamdar. The Inamdar drew the attention of the Land Acquisition Officer to that omission. But even then no Notice was issued to the Inamdar Compensation was determined and paid to the Occupants of the land.

The Inamdar then filed a suit against the Govt. for a declaration that the Acquisition Proceedings were illegal and void as no Notice was issued to him although he had an obvious interest in the land. The lower Court held that the Acquisition proceedings were valid upto the stage of acquiring possession. But thereafter Notice should have been issued to the Inamdar who had an interest in the land. The omission to issue the Notice could be taken to be deliberate under the circumstances. He relied on the Ruling in 52 Bom.L.R. 316 and gave a declaration that the proceedings as regards the determination of Compensatic were void. He called upon the Acquisition Officer to issue Notice to the plff under Sect 9(3) and then to proceed with the inquiry as to compensation.

The Govt accepted this decision and decided not to appeal against it. But the plff appealed and urged that the entire Acquisition proceedings may be declared void, or the Civil Court may also determine the Compensation . The learned District Judge held in appeal that the decree must provide for the eventuality that the Govt may not reopen the Inquiry . He therefore directed that the lower Court should fix a time limit within which the Govt should take the first steps towards reopening the inquiry as to Compensation after issuing notice to the plff under Sect 9(3) If the Govt did not take any such steps the Civil Court should proceed to determine the Compensation and should apportion the same between the Inamdar and the occupants. The question is whether the Govt should file an appeal against that decision

The Govt have already accepted the decision that the

proceedings regardding the determination of Compensation were illegal and void. The Govt would be prepared to reopen the inquiry after issuing Notice to the plff under Sect. 9(3) of the Act. Under these circumstances it does not seem to be necessary to file a second appeal. The Collector may be requested to direct the Land Acquisition Officer to reopen the Inquiry after issuing Notice to the plff under Sect 9(3) of the Land Acquisition Act.

S.R.K
13-5-52

R.L.A. 13/5

Civ. A 42 k.

2920—10,000—6-47—R(a)

ಅಪೀಲಿನೊಳಗಿನ
ಹುಕುಮುನಾಮೆಯು
(ಆರ್ಡರ್ಸ್‌೧೯, ರೂ. ೪೫).

(ಫಾರ್ಮ ನಂಬರು ೯೯೯
ಪರಿಶಿಷ್ಟ ಗ, ಶೆಡ್ಯೂಲ್ ೧).

ಹುಕುಮುನಾಮೆಯು

ಇಲ್ಲಿಯ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ.

ಮುಕ್ಕಾಮು

ಸಿವಿಲ್ ಕೋರ್ಟಿನ ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು

(೧) ಅಪೀಲಂಟ
(ಮೊದಲನೇ
ನಾನ).

ವಿರುದ್ಧ

(೨)

(೧)

(೨)

ಇಸವಿಯ ನಂಬರು ನೇದರಲ್ಲಿ ತಾರೀಖು ನೇ ತಿಂಗಳ ಸನ್ ನೆ
ಇಸವಿಯ ಹುಕುಮು ಆಕೂಲು ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ
ಮೇಲೆ ಹೇಳಿದ ಇವನ
ತರಫಿನ ತಾರೀಖಿನ ಹುಕುಮು ನಾಕೂಲು — ಮೇಲೆ ಇಲ್ಲಿಂ
ಅಪೀಲಿಗೆ — ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ನೆ ತಿಂಗಳನ ತಾರೀಖಿನ ದಿವಸ
ಮುಂದೆ, ಅಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ
ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ
ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ಕೆಳದ (೩)

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ	೧ನೇ ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟ್ಯಾಂಪು....	೬	೬	-	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟ್ಯಾಂಪು....			
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ				೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ			
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	೧	೨	-	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ				೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ			
೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೧	-	-	೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೧	-	-
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	೨	೧	೬	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ			
೭. ಉಲ್ಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	೫	-	-	೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟ್ಯಾಂಪು			
				೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ			
ಒಟ್ಟು....	೫೫	೬	-	ಒಟ್ಟು....	೧೧	-	-

ಈ ಹೊತ್ತು ತಾರೀಖು ೧೯ ತಿಂಗಳು ಅಕ್ಟೋಬರ ಸನ್ ೧೯೫೨ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು, ಸರಿಯಾಗಿ ಆದೆ.

ಸಹಿ/- ಕಾರಕೂನ.

ಸಹಿ/- V.N. Palekar
ಜಡ್ಜ.
೪-೬-೫೨

ಸಹಿ/- A.B. [illegible]
ಅಪೀಲೆಂಟ ವಕೀಲ.

ಸಹಿ/- A.C. Angadi.
ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದೆಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವದಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಇದರಲ್ಲಿ ಇನ್ನು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

True copy.
Asurust
Dist- Govt- Pleader.

Suits:
Bijapur.
For a declaration that the proceed-
-ings for the acquisition of
certain lands under the Land
Acquisition Act, 1894, are illegal
and ultra vires and for possession
of the suit land, or in the
alternative for recovery of
Rs.2,000 as compensation.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 15677/E
Bombay Castle, 23rd September 1952.
Government Resolution, Legal Department
Read/~~XXXXXX~~. No.1226 dated the 19th January 1951.

Letter from the District Government Pleader, Bijapur,

In the Court of the Civil Judge, (Senior Division), Bijapur. Civil Suit No. 18 of 1947.	No.304, dated ~~the~~ the 25th April 1952, forwarding a copy of judgment and stating that Appeal No.301
Shri Raghvendra Swami Math .. Plaintiff; Vs. The Province of Bombay & another .. Defendants	
Claim Rs.2,000/-	

of 1950 in the suit noted in the margin was decided by the Assistant Judge, Bijapur, on 19th April 1952, when the following order was~~x~~ passed:-

"It is declared that the award in suit is not binding on the appellant. However, the possession taken under sec.17(1) of the Land Acquisition Act is absolute and that question cannot be reopened.

The respondents are ordered to make a proper award regarding compensation only by giving a proper ~~xxxxx~~ notice to the appellant under sec.9(3) of the land Acquisition Act. The suit is remanded to the trial Court for the determination of the amount of the compensation only and its apportionment. The learned Civil Judge will be at liberty to fix a time within which the Government should take the first steps towards the making of the award as directed above. If the Govt. fail to move in the matter within that period, the learned trial Judge will be at liberty to order the payment of the compensa
-tion which he may decree.

.....

No order as to costs of this appeal".

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

original

R.T.Katarki
Deputy Secretary to Government.

Issued
23/9

To

The Revenue Department,

The Collector of Bijapur,

The District Government Pleader, Bijapur.

Submitted for sign
AC
19/9
D-S (civil)